
ENGROSSED SENATE BILL 5052

State of Washington

58th Legislature

2003 Regular Session

By Senators Hale, T. Sheldon, Hewitt, Johnson, Sheahan and Oke

Read first time 01/13/2003. Referred to Committee on Government Operations & Elections.

1 AN ACT Relating to significant legislative rules; reenacting and
2 amending RCW 34.05.328; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The Constitution of the state of Washington
5 vests the power to make laws in the legislature. In order for the
6 legislature to properly carry out its responsibility for establishing
7 new laws, this act revises rule-making requirements to assure that the
8 legislature can carefully review rules that impose significant
9 requirements on citizens before the rules take effect.

10 **Sec. 2.** RCW 34.05.328 and 2003 c 165 s 2 and 2003 c 39 s 13 are
11 each reenacted and amended to read as follows:

12 (1) Before adopting a rule described in subsection (~~(+5+)~~) (6) of
13 this section, an agency shall:

14 (a) Clearly state in detail the general goals and specific
15 objectives of the statute that the rule implements;

16 (b) Determine that the rule is needed to achieve the general goals
17 and specific objectives stated under (a) of this subsection, and

1 analyze alternatives to rule making and the consequences of not
2 adopting the rule;

3 (c) Provide notification in the notice of proposed rule making
4 under RCW 34.05.320 that a preliminary cost-benefit analysis is
5 available. The preliminary cost-benefit analysis must fulfill the
6 requirements of the cost-benefit analysis under (d) of this subsection.
7 If the agency files a supplemental notice under RCW 34.05.340, the
8 supplemental notice shall include notification that a revised
9 preliminary cost-benefit analysis is available. A final cost-benefit
10 analysis shall be available when the rule is adopted under RCW
11 34.05.360;

12 (d) Determine that the probable benefits of the rule are greater
13 than its probable costs, taking into account both the qualitative and
14 quantitative benefits and costs and the specific directives of the
15 statute being implemented;

16 (e) Determine, after considering alternative versions of the rule
17 and the analysis required under (b), (c), and (d) of this subsection,
18 that the rule being adopted is the least burdensome alternative for
19 those required to comply with it that will achieve the general goals
20 and specific objectives stated under (a) of this subsection;

21 (f) Determine that the rule does not require those to whom it
22 applies to take an action that violates requirements of another federal
23 or state law;

24 (g) Determine that the rule does not impose more stringent
25 performance requirements on private entities than on public entities
26 unless required to do so by federal or state law;

27 (h) Determine if the rule differs from any federal regulation or
28 statute applicable to the same activity or subject matter and, if so,
29 determine that the difference is justified by the following:

30 (i) A state statute that explicitly allows the agency to differ
31 from federal standards; or

32 (ii) Substantial evidence that the difference is necessary to
33 achieve the general goals and specific objectives stated under (a) of
34 this subsection; and

35 (i) Coordinate the rule, to the maximum extent practicable, with
36 other federal, state, and local laws applicable to the same activity or
37 subject matter.

1 (2) In making its determinations pursuant to subsection (1)(b)
2 through (h) of this section, the agency shall place in the rule-making
3 file documentation of sufficient quantity and quality so as to persuade
4 a reasonable person that the determinations are justified.

5 (3) Before adopting rules described in subsection ~~((+5+))~~ (6) of
6 this section, an agency shall place in the rule-making file a rule
7 implementation plan for rules filed under each adopting order. The
8 plan shall describe how the agency intends to:

9 (a) Implement and enforce the rule, including a description of the
10 resources the agency intends to use;

11 (b) Inform and educate affected persons about the rule;

12 (c) Promote and assist voluntary compliance; and

13 (d) Evaluate whether the rule achieves the purpose for which it was
14 adopted, including, to the maximum extent practicable, the use of
15 interim milestones to assess progress and the use of objectively
16 measurable outcomes.

17 (4) The adoption of rules described in subsection (6) of this
18 section must be made before December 1st of any year, and the rules may
19 not take effect before the end of the regular legislative session in
20 the next year.

21 (5) After adopting a rule described in subsection ~~((+5+))~~ (6) of
22 this section regulating the same activity or subject matter as another
23 provision of federal or state law, an agency shall do all of the
24 following:

25 (a) Provide to the ~~((business assistance center))~~ department of
26 community, trade, and economic development a list citing by reference
27 the other federal and state laws that regulate the same activity or
28 subject matter;

29 (b) Coordinate implementation and enforcement of the rule with the
30 other federal and state entities regulating the same activity or
31 subject matter by making every effort to do one or more of the
32 following:

33 (i) Deferring to the other entity;

34 (ii) Designating a lead agency; or

35 (iii) Entering into an agreement with the other entities specifying
36 how the agency and entities will coordinate implementation and
37 enforcement.

1 If the agency is unable to comply with this subsection (~~(4)~~)
2 (5)(b), the agency shall report to the legislature pursuant to (c) of
3 this subsection;

4 (c) Report to the joint administrative rules review committee:

5 (i) The existence of any overlap or duplication of other federal or
6 state laws, any differences from federal law, and any known overlap,
7 duplication, or conflict with local laws; and

8 (ii) Make recommendations for any legislation that may be necessary
9 to eliminate or mitigate any adverse effects of such overlap,
10 duplication, or difference.

11 (~~(5)~~) (6)(a) Except as provided in (b) of this subsection, this
12 section applies to:

13 (i) Significant legislative rules of the departments of ecology,
14 labor and industries, health, revenue, social and health services, and
15 natural resources, the employment security department, the forest
16 practices board, the office of the insurance commissioner, and to the
17 legislative rules of the department of fish and wildlife implementing
18 chapter 77.55 RCW; and

19 (ii) Any rule of any agency, if this section is voluntarily made
20 applicable to the rule by the agency, or is made applicable to the rule
21 by a majority vote of the joint administrative rules review committee
22 within forty-five days of receiving the notice of proposed rule making
23 under RCW 34.05.320.

24 (b) This section does not apply to:

25 (i) Emergency rules adopted under RCW 34.05.350;

26 (ii) Rules relating only to internal governmental operations that
27 are not subject to violation by a nongovernment party;

28 (iii) Rules adopting or incorporating by reference without material
29 change federal statutes or regulations, Washington state statutes,
30 rules of other Washington state agencies, shoreline master programs
31 other than those programs governing shorelines of statewide
32 significance, or, as referenced by Washington state law, national
33 consensus codes that generally establish industry standards, if the
34 material adopted or incorporated regulates the same subject matter and
35 conduct as the adopting or incorporating rule;

36 (iv) Rules that only correct typographical errors, make address or
37 name changes, or clarify language of a rule without changing its
38 effect;

1 (v) Rules the content of which is explicitly and specifically
2 dictated by statute;

3 (vi) Rules that set or adjust fees or rates pursuant to legislative
4 standards; or

5 (vii) Rules of the department of social and health services
6 relating only to client medical or financial eligibility and rules
7 concerning liability for care of dependents.

8 (c) For purposes of this subsection:

9 (i) A "procedural rule" is a rule that adopts, amends, or repeals
10 (A) any procedure, practice, or requirement relating to any agency
11 hearings; (B) any filing or related process requirement for making
12 application to an agency for a license or permit; or (C) any policy
13 statement pertaining to the consistent internal operations of an
14 agency.

15 (ii) An "interpretive rule" is a rule, the violation of which does
16 not subject a person to a penalty or sanction, that sets forth the
17 agency's interpretation of statutory provisions it administers.

18 (iii) A "significant legislative rule" is a rule other than a
19 procedural or interpretive rule that (A) adopts substantive provisions
20 of law pursuant to delegated legislative authority, the violation of
21 which subjects a violator of such rule to a penalty or sanction; (B)
22 establishes, alters, or revokes any qualification or standard for the
23 issuance, suspension, or revocation of a license or permit; or (C)
24 adopts a new, or makes significant amendments to, a policy or
25 regulatory program.

26 (d) In the notice of proposed rule making under RCW 34.05.320, an
27 agency shall state whether this section applies to the proposed rule
28 pursuant to (a)(i) of this subsection, or if the agency will apply this
29 section voluntarily.

30 (~~(+6+)~~) (7) By January 31, 1996, and by January 31st of each even-
31 numbered year thereafter, the office of financial management, after
32 consulting with state agencies, counties, and cities, and business,
33 labor, and environmental organizations, shall report to the governor
34 and the legislature regarding the effects of this section on the
35 regulatory system in this state. The report shall document:

36 (a) The rules proposed to which this section applied and to the
37 extent possible, how compliance with this section affected the
38 substance of the rule, if any, that the agency ultimately adopted;

1 (b) The costs incurred by state agencies in complying with this
2 section;

3 (c) Any legal action maintained based upon the alleged failure of
4 any agency to comply with this section, the costs to the state of such
5 action, and the result;

6 (d) The extent to which this section has adversely affected the
7 capacity of agencies to fulfill their legislatively prescribed mission;

8 (e) The extent to which this section has improved the acceptability
9 of state rules to those regulated; and

10 (f) Any other information considered by the office of financial
11 management to be useful in evaluating the effect of this section.

--- END ---